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February 21, 2008

Ravalli County Commissioners

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To: Ravalli County Board of County Commissioners *YSH*
Fax Number: 375-6507
From: Katy S. Hartney, Legal Assistant to William K. VanCanagan and Joslin E. Monahan
Re: Citizen Initiated Zoning Proposals
Our File No.: 19793.003

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Message: Please find attached correspondence from Ms. Joslin Monhan, Esq. regarding the above mentioned matter.

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February 21, 2008

VIA FACSIMILE [375-6507] and Regular USPS Mail

Ravalli County Board of County Commissioners
215 S. 4th Street, Suite A
Hamilton, Montana 59840

Dear Ravalli County Board of County Commissioners:

The purpose of this correspondence is to highlight key legal issues associated with a citizen initiated zoning proposal.

As we all know, zoning in the Eight Mile Creek region is an emotionally charged issue for all parties impacted thereby. This citizen initiated effort was motivated by fears that property owners in Ravalli County that their property rights were unprotected and that a large portion of their financial well-being was left to the wishes and whims of a few local activists and special interest groups.

The applicants submitting the instant proposal have fully complied with the requirements set forth under § 76-2-101 MCA et seq. and as a number of the affected freeholders have experience with the subdivision application process, the applicants are well-equipped to demonstrate that this proposal is required by the public interest and/or convenience.

Pursuant to § 76-2-203 MCA, zoning regulations must be made in accordance to the growth policy. Montana's Supreme Court has had significant opportunity to articulate the role of the growth policy in the zoning process.

Specifically, the Court has held that "to require strict compliance with the master plan [growth policy] would result in a master plan so unworkable that it would have to be constantly change to comply with the realities." Little v. Board of County Commissioners of Flathead County (1981) 193 Mont. 334, 352. Of course, no compliance requirement "defeats the purpose of planning." Little 193 Mont. at 352. The Court held that "substantial compliance" was required under Montana law.

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Since the enactment of 76-2-101 et seq. and the decision in Little, the Montana legislature passed 76-1-605 MCA which states in pertinent part,

(2)(a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may to withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

In the matter of Citizen Advocates for a Livable Missoula, Inc. v. City Council and Mayor of the City of Missoula (2006) 331 Mont. 269 the Court was clear that the "substantial compliance" standard may have been diminished by § 76-1-605 MCA and is an open issue. Id. at 276. In fact the Court noted "[f]rom its plain reading, it may be assumed that the 2003 legislation was intended to reduce in some fashion the reliance which local governing bodies are required to place upon growth policies when making land use decisions." Citizen Advocates, 331 Mont. at 276.

On the other hand, it is very well-settled is that while parts of a zoning proposal can be "very consistent with other parts of the [comprehensive] plan, [s]urely not every zoning proposal will be consistent with every goal and objective expressed in a city's growth plan documents." Id. at 279.

In Citizen Advocates, the proposal increased traffic congestion, failed to protect the historic features of the neighborhood, and included "big box" stores that allegedly violated the comprehensive plan. Still, since a purpose of the plan was to encourage existing neighborhood businesses like applicant businesses Safeway and St. Patrick's Hospital to stay in business, the proposal substantially complied with the comprehensive plan. The conditions of approval further ensured compliance with the plan. Id. at 276-279.

In this case, the drafters of the instant proposal were deliberated to develop the zoning specifications to comport with the Court's holdings in Little and Citizen Advocates and related, well-established Montana case law.

Collectively the Eight Mile Creek residents desired to protect property rights and enhance economic growth while respecting and preserving farming; ranching; water, timber, mineral resources; and wildlife and the natural environment. The affected freeholders who signed their names in support of this initiative are confident that the proposal achieves those ends.

Affected Eight Mile Creek area freeholders, many of whom have lived in the region their entire lives, firmly support this proposal.

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I anticipate the County Commissioners will appreciate the enclosed comprehensive, compliant zoning proposal and will continue to work in collaboration with the residents of Ravalli County whose interests they are charged to represent and protect.

As always, I look forward to and appreciate your continued high level of professionalism and cooperation.

Sincerely yours,

DATSOPOULOS, MacDONALD & LIND, P.C.



Joslin E. Monahan, Esq.

WKV/ksh
Enclosure as stated.

Cc: Ms. Stacey Dykeman (Via Email)

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